

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 7
)	
PAUL H. SCHWENDENER, INC., <i>et al.</i> ,)	Case No. 07-12145
)	(Jointly Administered)
)	
Debtors.)	Hon. Eugene R. Wedoff
)	Hearing Date: July 16, 2008
)	Hearing Time: 9:30 a.m.

NOTICE OF MOTION

TO: **Attached Service List**

PLEASE TAKE NOTICE that on **July 16, 2008 at 9:30 a.m.** or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Eugene R. Wedoff**, Bankruptcy Judge, in Courtroom 744 of the U.S. Courthouse, 219 South Dearborn Street, Chicago, Illinois, or in his absence, before such other Judge who may be sitting in his place and stead and hearing bankruptcy motions, and shall then and there present the **First and Final Application of Shaw Gussis Fishman Glantz Wolfson & Towbin LLC as Counsel to Schwendener Construction Company, Inc. for Allowance of Chapter 11 Compensation and Reimbursement of Expenses and Related Relief**, a copy of which is attached and herewith served upon you, and shall pray for the entry of an order in conformity with the prayer of said pleadings,

AT WHICH TIME AND PLACE you may appear if you so see fit.

Allen J. Guon (#6244526)
Shaw Gussis Fishman Glantz
Wolfson & Towbin LLC
321 North Clark Street, Suite 800
Chicago, Illinois 60610
(312) 541-0151 telephone
(312) 980-3888 facsimile

CERTIFICATE OF SERVICE

Allen J. Guon certifies that he caused to be served a true copy of the above and foregoing notice and attached pleading upon all parties indicated on the electronic filing receipt by operation of the Court's electronic filing system and upon the attached service list by electronic mail, on this 20th day of June 2008.

/s/ Allen J. Guon

**MASTER SERVICE LIST
PAUL H. SCHWENDENER, INC. ET AL.
CLIENT 6170**

<p>Michael S. Schwendener President Paul H. Schwendener, Inc. 1000 Vandustrial Dr. Westmont, IL 60559-2468 Phone: (630) 515-2444 Fax: (630) 810-1921 msspgh@aol.com</p>	<p>Scott B. Greene Daniel A. Zazove Perkins Coie LLP 131 S. Dearborn St., Ste. 1700 Chicago, IL 60603-5559 Phone: (312) 324-8652 Fax: (312) 324-9652 sgreene@perkinscoie.com dzazove@perkinscoie.com</p>
<p>Thomas S. Kiriakos Matthew V. Wargin Mayer Brown LLP 71 S. Wacker Dr. Chicago, IL 60606-4637 Phone: (312) 701-7275 Fax: (312) 706-8232 tkiriakos@mayerbrown.com mwargin@mayerbrown.com</p>	<p>Gregory A. Friedman Friedman & Holtz 208 S. LaSalle St., Ste. 760 Chicago, IL 60604 Phone: (312) 857-4000 x1 Fax: (312) 857-1880 gfriedman@friedmanholtz.com</p>
<p>David G. Lynch William Choslovsky DLA Piper Rudnick Gray Cary US LLP 203 N. LaSalle St., Ste. 1900 Chicago, IL 60601 Phone: (312) 368-4096 Fax: (312) 236-7516 david.lynch@dlapiper.com william.choslovsky@dlapiper.com</p>	<p>William J. Serritella Jr. John M. Riccione Aronberg Goldgehn Davis & Garmisa 330 N. Wabash Ave., Ste. 3000 Chicago, IL 60611 Phone: (312) 828-9600 Fax: (312) 828-9635 wserritella@agdglaw.com jriccione@agdglaw.com</p>
<p>Daniel J. Hyman Millennium Properties R/E, Inc. Two First National Plaza 20 S. Clark St., Ste. 630 Chicago, IL 60603 Phone: (312) 338-3000 Fax: (312) 338-3008 DHyman@mpirealestate.com</p>	<p>Jack J. Crowe Daniel J. McGuire Stephen C. Schulte Ryenne L. Easley Winston & Strawn LLP 35 W. Wacker Dr. Chicago, IL 60601 Phone: (312) 558-5600 Fax: (312) 558-5700 jcrowe@winston.com dmcguire@winston.com sschulte@winston.com reasley@winston.com</p>

<p>M. Gretchen Silver Office of the U.S. Trustee Northern District of Illinois 219 S. Dearborn St., 8th Floor Chicago, IL 60604 Phone: (312) 886-3327 Fax: (312) 886-5794 Gretchen.Silver@usdoj.gov</p>	<p>John A. Clark Assistant Corporation Counsel City of Chicago, Department of Law 30 N. LaSalle St., Ste. 1230 Chicago, IL 60602 Phone: (312) 744-5398 Fax: (312) 742-3925 john.clark@cityofchicago.org</p>
<p>Michael A. Forti, Deputy Corp. Counsel Thomas Forgeue, Assistant Corp. Counsel City of Chicago, Department of Law Constitutional & Commercial Lit. Div. 30 N. LaSalle St., Ste. 1230 Chicago, IL 60602 Phone: (312) 744-9018/2-0307 Fax: (312) 742-3925 mforti@cityofchicago.org tforgue@cityofchicago.org</p>	<p>Patrick Mazza (<i>Counsel to Huen Electric, Inc.</i>) Patrick Mazza & Associates 290 S. Main Place, Ste. 101 Carol Stream, IL 60188 Phone: (630) 933-9200 Fax: (630) 933-9824 schodera@mcminc.net</p>
<p>Patrick T. Wallace Pension and Welfare Fund Office of Fund Counsel 53 West Jackson Blvd., Ste. 550 Chicago, IL 60605 Phone: (312) 692-1540 Fax: (312) 692-1489 wallace.patrick@gmail.com</p>	<p>August A. Pilati (<i>Counsel to Midwest Bank and Trust Company</i>) Kenneth A. Fedinets August A. Pilati and Associates, Ltd. 53 W. Jackson Blvd., Ste. 528 Chicago, IL 60604 Phone: (312) 726-3100 Fax: (312) 939-1742 apilati@aapltdlaw.com kfedinets@aapltdlaw.com</p>
<p>John S. Mrowiec (<i>Counsel to Lehman Brothers Holdings, Inc.</i>) Conway & Mrowiec 20 S. Clark St., Ste. 1000 Chicago, IL 60603 Phone: (312) 658-1100 Fax: (312) 658-1201 jsm@cmcontractors.com</p>	<p>Patrick K. Dahl (<i>Counsel to Sarowatz Construction, Inc.</i>) Dahl & Bonadies 225 W. Washington St., Ste. 1640 Chicago, IL 60606 Phone: (312) 641-3245 Fax: (312) 641-1662 pdahl@dahlfirm.com</p>
<p>John E. Sebastian (<i>Counsel to Crum and Forster and Western Surety Company</i>) William J. Connelly Hinshaw & Culbertson LLP 222 N. LaSalle St., Ste. 300 Chicago, IL 60601 Phone: (312) 704-3000 Fax: (312) 704-3001 wconnelly@hinshawlaw.com jsebastian@hinshawlaw.com</p>	<p>W. Kent Carter (<i>Counsel to Nuline Electric Co., Inc. and Nuline Technologies, Inc.</i>) Clark Hill PLC 150 N. Michigan Ave., Ste. 2400 Chicago, IL 60601-7553 Phone: (312) 985-5906 Fax: (312) 985-5999 wcarter@clarkhill.com</p>

<p>Jason Martin Loebach (<i>Counsel to Evergreen Supply Company</i>) Daniel A. Edelstein Chitkowski Law Offices 801 Warrenville Rd., Ste. 620 Lisle, IL 60532 Phone: (630) 824-4808 Fax: (630) 824-4809 jml@chitkowskilaw.com dae@chitkowskilaw.com</p>	<p>Diane M. Baron (<i>Counsel to American Home Assurance Company</i>) Clausen Miller, P.C. 10 S. LaSalle St. Chicago, IL 60603 Phone: (312) 855-1010 Fax: (312) 606-7777 dbaron@clausen.com</p>
<p>Christopher R. Parker (<i>Counsel to The Kroger Co.</i>) Paul A. Lucey Michael Best & Friedrich LLP 180 N. Stetson Ave., Ste. 2000 Chicago, IL 60601 Phone: (312) 222-0800 Fax: (312) 222-0818 crparker@michaelbest.com palucey@michaelbest.com</p>	<p>Ann M. Edmonds (<i>Counsel to Gate Precast Company</i>) The Law Office of Ann Edmonds 608 S. Washington, Ste. 207 Naperville, IL 60540 Phone: (630) 420-9290 Fax: (630) 357-2642 ann@annedmonds.com</p>
<p>Elizabeth Z. Mathieson (<i>Counsel to Tressler, Soderstrom, Maloney & Priess</i>) Ralph J. Kooy Dean J. Tatooles Tressler, Soderstrom, Maloney & Priess 233 S. Wacker Dr., 22nd Floor Chicago, IL 60606 Phone: (312) 627-4000 Fax: (312) 627-1717 emathieson@tsmp.com rkooy@tsmp.com dtatooles@tsmp.com</p>	<p>Paula K. Maguire (<i>Counsel to Friedman & Holtz, P.C.</i>) Friedman & Holtz, P.C. 208 S. LaSalle St., Ste. 760 Chicago, IL 60604 Phone: (312) 857-4000 Fax: (312) 857-1880 pmaguire@friedmanholtz.com</p>
<p>David J. Letvin (<i>Counsel to Carpets by Kornick, Ltd.</i>) Letvin & Stein 541 N. Fairbanks Ct., Ste. 2121 Chicago, IL 60611 Phone: (312) 527-2841 Fax: (312) 527-2818 davidletvin@aol.com</p>	<p>Barry Snitman (<i>Counsel for Gary Darenski</i>) Nilson, Stookal, Gleason & Caputo, Ltd. 205 W. Randolph St., Ste. 440 Chicago, IL 60606 Phone: (312) 443-1331 Fax: (312) 443-0746 userir4m6991@cs.com</p>

<p>Sal Marino Travelers - National Accounts 1 Tower Square, 5MN Hartford, CT 06183-4044 Phone: (860) 277-6701 Fax: (860) 277-2158 sjmarino@travelers.com</p>	<p>James E. Morgan Bell, Boyd & Lloyd LLP 70 W. Madison St., 3100 Chicago, IL 60602 Phone: (312) 781-7234 Fax: (312) 827-8000 jmorgan@bellboyd.com</p>
<p>Scott C. Frost Statman, Harris & Eyrich, LLC 200 W. Madison., Ste. 3820 Chicago, IL 60606 Phone: (312) 263-1070 Fax: (312) 263-1201 sfrost@chicago.statmanharris.com</p>	<p>Charles Ingrassia Office of Fund Counsel 53 W. Jackson Blvd., Ste. 550 Chicago, IL 60604 Phone: (312) 692-1540 charlesi@chilpwf.com</p>
<p>Marc D. Sherman Marc D. Sherman & Associates, P.C. 3700 W. Devon Ave., Ste. E Lincolnwood, IL 60712 Phone: (847) 674-8756 marc@mshermanlawoffice.com</p>	<p>William S. Piper Riordan, Donnelly, Lipinski & McKee, Ltd. 10 N. Dearborn St. Chicago, IL 60602 Phone: (312) 663-9400 wpiper@rdlmlaw.com</p>
<p>F. Kevin Murnighan Carey, Filter, White & Boland 33 W. Jackson, 5th Floor Chicago, IL 60604 Phone: (312) 939-4300 Kevin@careyfilter.com</p>	<p>Andrew Weiss Gardiner Koch & Weisberg 53 W. Jackson Blvd., Ste. 950 Chicago, IL 60604 Phone: (312) 362-0000 aweiss@gkw-law.com</p>
<p>Justin L. Weisberg Raymond M. Krauze BryceDowney, LLC 200 N. LaSalle St., Ste. 2700 Chicago, IL 60601 Phone: (312) 377-1501 jweisberg@brycedowney.com rkrauze@brycedowney.com</p>	<p>Laurie A. Silvestri Law Offices of Laurie A. Silvestri Three First National Plaza, Ste. 3700 Chicago, IL 60602 Phone: (312) 558-4250 Fax: (312) 558-7773 lsiljgas@aol.com</p>
<p>Richard D. Trainor Richard D. Trainor Ltd. 33 N. Dearborn St., Ste. 1700 Chicago, IL 60602 Phone: (312) 346-1373 Fax: (312) 346-2708 rtrainor@trainorltd.com</p>	<p>Gina B. Krol (<i>Trustee</i>) Cohen & Krol 105 W. Madison Street, Suite 1100 Chicago, IL 60602 GKrolAty@aol.com</p>

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
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In re:)	Chapter 7
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PAUL H. SCHWENDENER, INC., <i>et al.</i> ,)	Case No. 07-12145
)	(Jointly Administered)
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Debtors.)	Hon. Eugene R. Wedoff
)	Hearing Date: July 16, 2008
)	Hearing Time: 9:30 a.m.

**FIRST AND FINAL APPLICATION OF SHAW GUSSIS FISHMAN GLANTZ
WOLFSON & TOWBIN LLC AS COUNSEL TO SCHWENDENER CONSTRUCTION
COMPANY, INC. FOR ALLOWANCE OF CHAPTER 11 COMPENSATION AND
REIMBURSEMENT OF EXPENSES AND RELATED RELIEF**

Shaw Gussis Fishman Glantz Wolfson & Towbin LLC (“Shaw Gussis”) applies to this Court pursuant to 11 U.S.C. §§ 330 and 331, Fed. R. Bankr. P. 2002(a)(6), (i), 2016(a) and 9007 and Local Bankruptcy Rule 5082-1 for the allowance of \$26,716.50 in compensation for 82.90 hours of professional services rendered as counsel to Schwendener Construction Company, Inc. (“SCC”), for the chapter 11 period beginning July 8, 2007 through and including May 14, 2008 (the “Application Period”), plus an amount not to exceed \$1,750 for an estimate of 5.0 hours of professional services to be rendered in connection with the preparation and presentation of this fee application, and the reimbursement of \$776.22 for actual costs incurred incident to those services. In addition, Shaw Gussis requests that further notice of the hearing on this application (the “Application”) be waived. In support of this Application, Shaw Gussis states as follows:

JURISDICTION

1. On July 8, 2007 (the “Petition Date”), SCC, Paul H. Schwendener, Inc. (“PHS”) and Harston/Schwendener, a Joint Venture (“HSJV,” and together with SCC and PHS, the “Construction Debtors”), State & Kinzie Associates, Inc. (“S&K”) and M.P. Associates L.P.

(“MP Associates”) filed related voluntary petitions for relief under chapter 11 of the Bankruptcy Code.¹ At that time, the Construction Debtors were in possession of their assets and managing their assets as debtors in possession within the meaning of 11 U.S.C. § 1101(1).

2. On October 2, 2007, the Office of the United States Trustee (“UST”) appointed an official committee of unsecured creditors in PHS’s bankruptcy case (the “PHS Committee”), consisting of Mechanical Inc., Prairie House at Central Station, LLC (“Prairie House”) and Flo Tech Mechanical Systems, Inc.

3. On May 14, 2008, on the motion of the Northern Trust Company (“Northern”) and Midwest Bank & Trust (“Midwest”), the chapter 11 cases of the Construction Debtors were converted to cases under chapter 7 of the Bankruptcy Code. On that date, the UST appointed Gina B. Krol as the interim chapter 7 trustee of the bankruptcy estates of the Construction Debtors, pursuant to 11 U.S.C. § 701(a)(1).

4. This Court has jurisdiction to hear this matter and enter a final order granting the relief requested herein pursuant to 28 U.S.C. §§ 1334 and 157(b)(2) and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois.

RETENTION OF SHAW GUSSIS

5. Shortly after the Petition Date, the Construction Debtors applied to this Court for an order approving the retention of Shaw Gussis as their general bankruptcy counsel in connection with these jointly-administered chapter 11 cases. (Dkt. # 6). On July 11, 2008, the Court approved the retention of Shaw Gussis as counsel to the Construction Debtors effective as

¹ On July 11, 2007, the Court entered an order directing the joint administration of the PHS, SCC, HSJV and MP Associates chapter 11 cases for procedural purposes only pursuant to Fed. R. Bankr. P. 1015(b). On April 1, 2008, the Court terminated joint administration of the S&K and MP Associates chapter 11 cases. At this time, only the Construction Debtors are being jointly administered in the captioned case.

of the Petition Date, under the terms set forth in the application (the “Retention Order”).
(Dkt. # 9).

6. Prior to the Petition Date, on behalf of the Construction Debtors, S&K and MP Associates, Michael S. Schwendener (“MSS”) paid Shaw Gussis \$150,000 out of a total retainer of \$250,000 (the “Retainer”) as an advance payment deposit, and not as a security retainer, to render services before the commencement of and in connection with the bankruptcy cases of Construction Debtors, S&K and MP Associates. (Dkt. #6). After the Petition Date, MSS paid Shaw Gussis the \$100,000 balance of the Retainer.

7. After application of the Retainer to services rendered and expenses incurred prior to filing the petition, \$216,725.50 of the Retainer remained available to apply against Shaw Gussis’s postpetition fees and expenses for all 5 debtor cases. Any portion of the Retainer remaining after application to Shaw Gussis’s final chapter 11 compensation and expense reimbursement shall be applied to fees and expenses incurred in representing the debtors after conversion to chapter 7.

8. In this Application, Shaw Gussis seeks payment only from the Retainer and not from assets of SCC’s estate.

BACKGROUND

9. PHS was a full service general contracting, construction management and construction consulting firm which had operated in the greater Chicagoland area since 1921, completing more than 1,500 private and public construction contracts. SCC was a contractor which for many years had performed construction work on a variety of projects.

10. PHS and Harston Construction Co., Inc. (“Harston Construction”) formed HSJV to perform as general contractor under certain construction contracts with the City of Chicago

related to the Lakefront Millennium Park Project – the Contract B-Garage Structure and the Contract E-METRA Structure. PHS is the managing party and a 49% owner of HSJV and Harston Construction is the 51% owner of HSJV.

11. Prior to the Petition Date, PHS financed its operations with Northern through a credit facility established pursuant to an Amended and Restated Credit Agreement and certain Security and Pledge Agreements (collectively, the “Northern Credit Agreement”). HSJV, SCC, S&K, MSS and certain other entities provided guaranties for the obligations under the Northern Credit Agreement. In order to secure their respective obligations under the Northern Credit Agreement and their guaranties, PHS, HSJV, SCC and certain other entities granted Northern a security interest in substantially all of their assets. As of the Petition Date, the principal balance owed under the Northern Credit Agreement was approximately \$10,000,000.

12. In addition to its secured obligations to Northern, as of the Petition Date, PHS also financed its operations with Midwest through a credit facility established pursuant to an Amended and Restated Credit Agreement, as well as other credit agreements, and certain Security and Pledge Agreements (collectively, the “Midwest Credit Agreement”). HSJV, SCC, S&K, MP Associates, MSS and certain other entities provided guaranties for the obligations under the Midwest Credit Agreement. In order to secure their respective obligations under the Midwest Credit Agreement and their guaranties, PHS, HSJV, SCC, MP Associates and certain other entities granted Midwest a security interest in substantially the same assets in which Northern asserts a security interest. As of the Petition Date, the principal balance that the Debtors owed under the Midwest Credit Agreement was approximately \$20 million (excluding

contingent amounts owed in connection with certain letter of credit obligations and excluding any direct obligations of MSS).²

SERVICES RENDERED BY SHAW GUSSIS – GENERALLY

13. Throughout the Application Period, Shaw Gussis rendered in excess of 82.90 hours of legal and paraprofessional services to the Debtor having an aggregate value of \$26,716.50 for an average hourly rate of approximately \$322. Shaw Gussis has provided professional services to SCC with respect to virtually every aspect of its case. All of the services for which compensation is requested were services, which, in Shaw Gussis's billing judgment, were necessarily rendered after due consideration of the expected costs and anticipated benefits of such services.

14. When working on items that were applicable to more than one debtor entity, to the extent possible, Shaw Gussis split the total professional fees incurred in connection with such item to each of the relevant affected debtors (i.e., PHS, SCC, HSJV, S&K and MP Associates). Accordingly, the total time billed to SCC may be significantly less than the total time spent on individual tasks within a particular time entry. This practice resulted in substantial savings to each estate since the relevant entities were able to split the professional fees rather than be individually responsible for the entire amount related to such item.

15. In an effort to provide the Court and parties in interest with understandable information concerning the amount and nature of Shaw Gussis's services during the Application Period, and in compliance with Local Bankruptcy Rule 5082-1, Shaw Gussis has classified its

² Nothing in this Application shall constitute a finding as to the enforceability or allowability of the alleged claims of Northern or Midwest or the liens asserted thereby in the assets of the Construction Debtors', S&K's or MP Associates' estates, nor shall it constitute a waiver of their right to contest the same.

services into eight (8) separate categories of services.³ The detailed statements for each time category are attached as Exhibit A to this Application. The following is a general description of the tasks performed in each of Shaw Gussis's categories:

- **Case Administration:** (Fees: \$3,012.00 / Hours: 8.20) Services pertaining to the general administration of SCC's case, including, among other things: (a) participating in status conferences, meetings, telephone conferences, and other activities where multiple subject matters were discussed, analyzed, or otherwise acted upon; (b) providing status reports to SCC and the UST concerning various matters in the case; (c) reviewing, revising and filing SCC's monthly operating reports.
- **Cash Collateral/DIP Financing:** (Fees: \$9,529.00 / Hours: 19.80) Services pertaining to the negotiation of secured lenders issues, including, among other things: (a) participating in numerous meetings and telephone conferences, with the Construction Debtors, Northern, Midwest, Perkins, and other interested parties concerning a possible settlement with Northern and Midwest; and (b) negotiating and drafting term sheets for a possible global settlement of Northern's and Midwest's asserted \$35 million secured claims.
- **Creditors and Claims:** (Fees: \$1,014.00 / Hours: 4.90) Services pertaining to general creditor issues, including, among other things, (a) communicating with individual creditors and creditor representatives regarding SCC's case; (b) preparing and presenting a motion to set the claims bar dates.
- **Fee Applications:** (Fees: \$665.00 / Hours: 1.90) Services pertaining to reviewing and revising the detailed statement of services rendered by Shaw Gussis.
- **General Investigation:** (Fees: \$2,650.50 / Hours: 7.30) Services pertaining to general investigation, including the investigation of possible claims against Midwest and Northern.
- **Plan of Reorganization:** (Fees: \$326.00 / Hours: 1.00) Services pertaining to plan issues including, preparing and attending two motions to extend plan exclusivity.
- **Postpetition Litigation:** (Fees: \$748.00 / Hours: 1.90) Services pertaining to postpetition litigation include drafting a complaint against Midwest and Northern for equitable subordination.
- **Statements and Schedules:** (Fees: \$8,598.00 / Hours: 37.60) Services pertaining to statements of financial affairs and schedules, including, among other things, the following: (a) participating in conferences with SCC to discuss the preparation of schedules and statements; (b) drafting, reviewing, revising and filing SCC's schedules of

³ The July 10, 2007, time entry in the "Tax Issues" category should have been included in the Cash Collateral Category.

assets liabilities and statement of financial affairs and amendments to same; (c) preparing and presenting a motion to extend time to file statements and schedules; and (d) preparing for and attending three SCC 341 meetings.

SUMMARY OF SERVICES RENDERED BY PROFESSIONAL

16. In summary, the total compensation sought with respect to the eight (8) categories of services set forth above is \$26,716.50. In addition, and in accordance with Local Rule 5082-1(B)(1), the total compensation sought for each professional with respect to the aforementioned categories is as follows:

<u>Professional</u>	<u>Position</u>	<u>Hourly Rate</u>	<u>Hours</u>	<u>Amount</u>
Steven B. Towbin	Member	\$580.00	15.60	\$9,048.00
Richard A. Saldinger	Member	\$400.00	3.60	\$1,440.00
Allen J. Guon	Member	\$350.00	26.00	\$9,100.00
Mark L. Radtke	Associate	\$325.00	3.30	\$1,072.50
Vipin R. Gandra	Associate	\$230.00	1.80	\$414.00
Patricia M. Fredericks	Paralegal	\$175.00	20.00	\$3,500.00
Melissa A. Herman	Paralegal	\$170.00	12.60	\$2,142.00

17. The hourly rates charged by Shaw Gussis with respect to SCC's case compare favorably with the rates charged by other Chicago metropolitan firms having attorneys and paralegals with similar experience and expertise as the Shaw Gussis professionals providing services to SCC in connection with this case. Further, the amount of time spent by Shaw Gussis with respect to the case is reasonable given the difficulty of the issues presented, the time contracts imposed by the circumstances, the amounts at stake, the sophistication and experience of opposing counsel, and the ultimate benefit to the estate.

18. Shaw Gussis has conscientiously attempted to avoid having multiple attorneys appear or convene on behalf of SCC. In certain circumstances, however, it was necessary for

more than one Shaw Gussis attorney to appear in Court at the same time. This was primarily the case for hearings at which a variety of matters were presented to the Court. In complex matters, each attorney appearing in Court possessed certain in-depth knowledge of discrete parts of matters that required the presence of multiple attorneys at those hearings. Without the presence of the additional attorneys, would not have been able to adequately present those motions or fully respond to objections or questions raised at the hearings. Similarly, on certain occasions, Shaw Gussis had more than one attorney attend a meeting to strategize on issues that had particular import on multiple areas of the case. To the greatest extent possible, meetings, court appearances, negotiations, and other matters were handled on an individual basis.

19. The issues presented by the case have been legally and factually complex, and the amounts at stake significant. Given the criteria set forth in 11 U.S.C. § 330, namely (i) the nature, extent and value of the services; (ii) the time spent; (iii) the rates charged for such services; (iv) the performance of the services within a reasonable amount of time commensurate with the complexity, importance and nature of the problem, issue or task addressed; and (v) the reasonableness of the services based on the compensation charged by comparably skilled practitioners in other bankruptcy and non-bankruptcy matters, Shaw Gussis respectfully submits that the requested final compensation represents a fair and reasonable amount that should be allowed in full.

THE EXPENSES REQUESTED

20. The actual and necessary costs expended by Shaw Gussis during the Application Period are also detailed in Exhibit A. The requested reimbursement amount for expenses incurred is \$776.22. All of the expenses for which reimbursement is sought are expenses that Shaw Gussis customarily recoups from all of its clients.

21. The specific expenses incurred during the Application Period for which reimbursement is requested are as follows:

<u>Category</u>	<u>Amount</u>
CT Corp (lien searches)	\$291.80
Telephone Conference Services	\$33.21
Copying Services	\$44.55
Filing Fees	\$26.00
Commercial Messenger Delivery (e.g., Metro)	\$5.80
Overnight delivery (e.g., FedEx)	\$78.11
Pacer	\$29.87
In City Transportation	\$14.00
In-house Photocopy	\$104.06
Postage	\$148.82
TOTAL:	\$776.22

22. Legal Research Charges (Westlaw / PACER): Shaw Gussis utilized Westlaw whenever it was determined that using Westlaw was more cost effective than using traditional or non-computer-assisted legal research. Shaw Gussis contracted with Westlaw for a research package that includes pre-paid access to certain bankruptcy resources, plus an hourly rate for all other usage. Westlaw charges reflect the actual out-of-pocket expense incurred by Shaw Gussis or, where the research falls within the pre-paid bankruptcy research package, actual usage billed at a rate of \$2.00 per minute. Shaw Gussis submits that the Westlaw package provides the most cost-efficient means of access computerized legal research, and the lowest cost possible to the client. Shaw Gussis makes no profit on Westlaw or other legal research expenses.

23. Photocopy: Photocopy charges include internal and outsourced copies. Generally, Shaw Gussis makes all copies internally. All internal copies are billed at a rate of \$0.10 per page. Shaw Gussis maintains a record of copy charges all copier charges made for

every file. Where a large copy job may be more efficiently conducted by an outside copying service, Shaw Gussis charges the actual costs for expenses incurred. Outsourced copying services may include binding or color copying.

24. Postage / Messenger Delivery / Overnight Delivery: In order to keep overnight delivery carrier charges to a minimum, service of most pleadings was accomplished by regular first class mail or e-mail. Shaw Gussis utilized a reputable common carrier, such as Federal Express or UPS, or local messenger service where expedited delivery was necessary to ensure timely delivery of sensitive information.

25. Telephone Conference Services: Shaw Gussis utilized a competitively priced telephone conferencing service for its conference calls among SCC, its advisors, co-counsel, and/or representatives of the creditors. Where possible, SCC also utilized the telephone conferencing service for meetings and settlement negotiations with opposing counsel.

26. All expenses incurred by Shaw Gussis were ordinary and necessary expenses. All expenses billed to SCC were billed in the same manner as Shaw Gussis bills non-bankruptcy clients. Further, the expenses for which reimbursement is sought constitute the types and amounts previously allowed by bankruptcy judges in this and other districts.

COMPLIANCE WITH 11 U.S.C. § 504

27. Other than as provided for and allowed by 11 U.S.C. § 504, there is no agreement between Shaw Gussis and any other firm, person or entity for the sharing of division of any compensation paid or payable to Shaw Gussis.

NOTICE

28. Notice of this Application has been given to: (a) the Office of the United States Trustee; (b) counsel to the secured lenders; (c) counsel to the PHS Committee; (d) the Trustee

and (e) parties requesting notice in the jointly-administered cases. In light of the nature of the relief requested and the costs and burdens of transmitting notice to all of SCC's creditors, Shaw Gussis respectfully requests that additional notice of the hearing on this Application be waived for good cause shown pursuant to Fed. R. Bankr. P. 2002(i) and 9007.

WHEREFORE, Shaw Gussis requests the entry of an order, substantially in the form attached hereto, that:

(a) Allows Shaw Gussis \$26,716.50 in final chapter 11 compensation for the Application Period, plus an amount not to exceed \$1,750 for an estimate of 5.0 hours of professional services to be rendered in connection with the preparation, filing and presenting of this Application;

(b) Allows Shaw Gussis \$776.22 in final chapter 11 expense reimbursement for the Application Period;

(c) Authorizes Shaw Gussis to apply the Retainer to the final compensation and expense award;

(d) Waives other and further notice of the hearing with respect to this Application;
and

(e) Provides such additional relief as may be just and equitable under the circumstances.

Respectfully submitted,

Shaw Gussis Fishman Glantz
Wolfson & Towbin LLC

Dated: June 20, 2008

By: /s/Allen J. Guon
For the Firm

Steven B. Towbin (#2848546)
Allen J. Guon (#6244526)
Shaw Gussis Fishman Glantz
Wolfson & Towbin LLC
321 North Clark Street, Suite 800
Chicago, Illinois 60610
(312) 541-0151 telephone
(312) 980-3888 facsimile